

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Sections 6576 and 6950
Pertaining to the Herbicide Clopyralid

UPDATE OF THE INITIAL STATEMENT OF REASONS

The originally proposed regulatory action was noticed in the *California Regulatory Notice Register* on December 17, 2004.

During the 45-day public comment period, the Department of Pesticide Regulation (DPR) received comments from six individuals.

DPR has adopted section 6576 and subchapter 4, article 1, section 6950 in chapter 4 of Title 3 California Code of Regulations (3 CCR). The pesticide regulatory program activities affected by this action are those pertaining to pesticide enforcement. In summary, this regulatory action restricts sales and use of the herbicide clopyralid when it is to be used on lawn and turf, to protect commercial compost from potential contamination.

In 1997, clopyralid, a low-toxicity herbicide that poses little hazard to people, animals, and most vegetation, was initially registered for use in California by the basic manufacturer to combat yellow starthistle, a noxious weed that can kill livestock. It was subsequently registered by the basic manufacturer and other registrants for use on lawn and turf for control of broadleaf weeds.

In 2000, clopyralid was detected in compost in Washington State and determined to be the cause of injury to nontarget plants. Grass clippings from residential lawns treated with clopyralid-containing products were considered to be one source of the residues in compost. Although some commercial compost facilities in California have detected clopyralid residues, no cases of nontarget vegetative damage due to clopyralid residues in compost derived from grass clippings have been documented in the state.

Compost plays a critical role in implementing the California Integrated Waste Management Act of 1989. This law requires all cities and counties to develop source reduction, recycling, and composting programs to achieve a 50 percent reduction in the amount of solid waste disposed of in California. The economic viability of the California composting industry will be threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of compost due to the presence of clopyralid residues. Local governments and waste haulers divert six million tons of yard waste annually from landfills to composting facilities, making composting a principal means by which local governments meet the state's landfill diversion requirements.

DPR and the California Integrated Waste Management Board (CIWMB), within the California Environmental Protection Agency, began investigating clopyralid residues in compost several years ago. DPR and CWIMB co-sponsored a workgroup that included compost industry

representatives, the basic manufacturer, and other interested parties. This workgroup sponsored a series of stakeholder meetings to determine how clopyralid is used in California and which uses can potentially contaminate compost feedstocks. The workgroup coordinated stakeholder efforts to provide public information on the problem and to support a compost testing program to generate clopyralid residue data.

Assembly Bill (AB) 2356 (Chapter 591, Statutes of 2002) subsequently placed limitations on the sale and use of clopyralid turf products and required DPR to make a determination about continued use of clopyralid turf products to protect compost from becoming contaminated with persistent clopyralid residues. The Director was required to make a determination by April 1, 2003, on which lawn and turf uses are likely to result in persistent residues in compost and which uses will not. Persistent residues are defined by the bill as "residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants." For those uses that are likely to cause persistent residues in compost, the Director must either impose restrictions or cancel uses.

In the determination, DPR found that the use of the herbicide clopyralid on golf courses meets the standard in AB 2356 that there is no reasonable likelihood of persistent residues in compost. Therefore, golf courses were exempted. Other lawn and turf uses of the herbicide clopyralid on sites such as parks, playing fields, cemeteries, and commercial (nonresidential) sites do not meet the standard of no reasonable likelihood that uses will not result in persistent residues in compost, and are subject to regulation.

Under the existing requirements of AB 2356, the regulations require that only licensed or certified qualified applicators can purchase clopyralid products labeled for use on lawn and turf. The regulatory action restricts the manner in which these licensed or certified qualified applicators use clopyralid turf products. Section 6950 prohibits these persons from applying clopyralid to turf unless they assure that grass clippings will remain on the property. To maximize outreach and compliance, section 6576 requires licensed pest control dealers, prior to sale of a pesticide containing clopyralid, to obtain a signed statement from a licensed or certified qualified applicator certifying that he/she or their employees will not apply any product containing clopyralid to a residential lawn, and will only apply clopyralid to sites where the collected grass clippings will remain on the property.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

DPR has received six letters/e-mails of comment regarding the proposed regulations. They were submitted by: John Gundlach, President of the Association of Compost Producers (commentor #1); Karen Watts, Western Farm Service (commentor #2); Gary Maxwell, Target Specialty Products (commentor #3); Evan Edgar, Legislative Advocate for the California Compost Coalition (commentor #4); Will Bakx, Sonoma Compost Co. (commentor # 5); and Brian Bret, Dow AgroSciences LLC (commentor #6).

- Commentor #1:

Comment #1: The current language of the proposed regulations fails to meet the specifications of AB 2356; in that it does not provide appropriate monitoring and enforcement mechanisms to assure that grass clippings from clopyralid-treated sites are disposed of properly and will not contaminate recycled organics. The Association of Compost Producers recommends language be added to the clopyralid regulations to require property owners and landscape contractors be notified of the regulatory requirements and potential penalties for violations regarding clopyralid-treated materials. Applicators should be required to obtain written verification from property owners (or their agents) and landscape contractors that clopyralid-laden material will either not be removed from the site or be disposed of in a landfill where the material is marked to not be recycled into compost.

Response: DPR does not agree with this comment that the requirements of AB 2356 were not met. AB 2356 required the Director to make a determination to impose restrictions or cancel use. It did not require monitoring or enforcement mechanisms to assure proper disposal of certain grass clippings. The regulations will place obligations on both licensed pest control dealers and qualified applicators to control the sale and use of clopyralid turf products, respectively. The licensed pest control dealer has the ultimate control over who can purchase and use a clopyralid turf product. The qualified applicator has the ultimate control over where a clopyralid turf product will be used and how it will be applied. The qualified applicator shall assure the clopyralid turf product will only be applied to sites where the collected grass clippings will remain on the property. If the qualified applicator is not able to determine from the landscaper or property manager the fate of the grass clippings collected from the treatment site, then he/she cannot certify to the pest control dealer that the collected grass clippings will remain on the property.

Comment #2: A monitoring system, including random audits and a testing program, should be implemented by DPR to track organic materials where clopyralid is used. The current regulatory package lacks provisions for a monitoring program that will confirm the effectiveness of the clopyralid regulations. The Director of DPR has the power under the California Food and Agricultural Code (FAC) to establish performance standards and tests to evaluate the continued registration of a pesticide that has demonstrated it may cause uncontrollable adverse effects on the environment. Future action is warranted to monitor the efficacy of these regulations, as part of DPR's reevaluation and risk assessment processes.

Response: The county agricultural commissioners (CACs) already have the authority to conduct random or targeted audits of pest control dealers to determine if the dealers are obtaining and archiving the required signed statements from qualified applicators when they purchase clopyralid lawn and turf products.

AB 2356 did not mandate that monitoring of clopyralid residues in organic materials be conducted to assess the effectiveness of the DPR Director's determination. However, the CIWMB did fund a program to test compost made in California for clopyralid residues. The compost was tested in the fall of 2003 and the summer and fall of 2004 with samples taken from 15 facilities during each period. The highest level detected was 6.4 parts per billion (ppb) which is barely at the level known to cause phytotoxicity in the plants most sensitive to clopyralid (beans, red clover, tomatoes). The results indicate the highest levels of clopyralid continue to decrease over the monitoring period with about half of the samples containing clopyralid residues at or below the limit of quantification (1.0 ppb).

DPR does not agree with the comment that monitoring is warranted to determine the efficacy of these regulations as part of DPR's reevaluation and risk assessment processes. The Director has the authority under FAC section 12824 to place a pesticide active ingredient into reevaluation. The reevaluation process is initiated when information or reports are received indicating the use of a pesticide may cause actual, or has the potential to cause significant, adverse effects to people or the environment. The available residue data indicate the clopyralid levels detected in compost continue to drop with most samples approaching, or at the limit of, detection (1.0 ppb). At these levels, even the most sensitive plants should not experience phytotoxicity to clopyralid. DPR has not received any confirmed reports of crop losses due to clopyralid residues in compost derived from grass clippings. There is not sufficient evidence to justify placing clopyralid into reevaluation.

DPR's risk assessment program is focused on human health. The occurrence of clopyralid residues in compost is not a human health issue, but rather an issue of potential phytotoxicity to plants grown in compost-amended soil or growing media. The review of the toxicology data for clopyralid indicates it exhibits low acute toxicity and the chronic toxicity studies did not detect any chronic toxicity, oncogenicity, or adverse reproductive effects. The results from the toxicological data review do not support the need to conduct a risk assessment of clopyralid at this time. Thus, collecting further data on clopyralid residues in organic material that may end up in compost is unrelated to DPR's risk assessment program.

- Commentor #2:

Comment #3: The new regulations will require the training of employees, generate burdensome paperwork and be expensive for pest control dealers to implement. The agricultural commissioners will have to enforce the regulations at their expense.

Response: The restrictions on the sale and use of clopyralid lawn and turf products are not unusual or excessive. The requirement in section 6576, that licensed or certified qualified pesticide applicators provide written certification of their knowledge of the clopyralid regulations to licensed pest control dealers, and that the dealers must retain the certification for two years, is similar to the record keeping required for the sale and use of pesticides classified as restricted materials. The additional documentation will result in a minimal additional cost to the

qualified applicators and dealers. Conducting dealer audits is a current responsibility of the CACs.

- Commentor #3:

Comment #4: The economic impact statement on the proposed clopyralid regulations indicates there will be minimal impact on pesticide dealers. However, the costs due to paperwork, training, tracking and maintaining files for responsible dealers could be significant. Clopyralid labels for lawn and turf have already been amended to remove residential uses on lawns and to limit use on golf courses. If the use restrictions are already on the clopyralid label, why should the pesticide dealer be the one required to enforce them? The proposed set of regulations seems to be an unnecessary and expensive hardship for pesticide dealers, especially since the label is already the law.

Response: Not all clopyralid labels for lawn and turf products have been amended to remove residential uses on lawns and to limit use on golf courses. In fact, the majority of the clopyralid lawn and turf products registered for sale in California have not had their labels amended to bear the new use restrictions provided by the manufacturer of technical clopyralid. Only some of the registered products bear the new label language. The manufacturer of technical clopyralid has provided training for pesticide sales staff and informative handouts for pest control dealers. Currently, there is not a regulatory requirement for dealers or pesticide applicators to cooperate with this program. These regulations will require pest control dealers to communicate with the clopyralid purchasers about the application and composting restrictions for clopyralid. Also, see response to comment #3.

- Commentor #4

Comment #5: The commentor feels the proposed clopyralid regulations fail to impose the statutes mandated by AB 2356 by not providing for monitoring and enforcement mechanisms to assure that grass clippings from clopyralid-treated sites do not leave the property. Property owners and landscape contractors, who may remove green waste from a clopyralid-treated site, must be notified in some way of the regulatory requirements. Applicators should be required to obtain written verification from property owners (or their agents) and landscape contractors that clopyralid contaminated green waste will not be moved from the site.

Response: See response to comment #1.

Comment #6: A monitoring system, including random audits and a testing program, should be implemented by DPR to track organic materials where clopyralid is used. The proposed regulations lack a monitoring program that can evaluate the effectiveness of the proposed regulations.

Response: See response to comment #2.

Comment #7: The use of clopyralid is increasing according to the DPR Pesticide Use Report. Greater amounts of green waste are being composted to comply with the mandates of AB 939. These two trends indicate there is an increasing risk that the contamination of compost feed stocks with clopyralid will continue to occur. Without effective provisions for monitoring and enforcing these regulations, there will continue to be an unacceptable threat to the compost industry.

Response: Although DPR agrees that Pesticide Use Report data demonstrates increasing use of clopyralid, a more detailed examination of the data demonstrates that the increased use is not on landscaping sites that are the focus of AB 2356 and these regulations. The sites where most of the clopyralid use is reported--agronomic crops, forestlands, nurseries, rangeland, rights-of-way-- are traditionally not sources of green waste that will be composted. The following table summarizes the clopyralid use as reported to DPR over the last four years.

Clopyralid Use in California*

Year of Use	Landscaping** (lbs. A.I.)	Total Use All Sites (lbs. A.I.)
2000	8431	13,176
2001	3786	14,715
2002	3056	12,848
2003	2588	36,998

* Information source, DPR Pesticide Use Report summaries 2000-2003. 2004 data not available yet.

** Reporting site for clopyralid use on lawns and turf.

The trend of the data in the DPR Pesticide Use Report summaries indicates clopyralid use has been increasing over the last four years with the exception of one year. The data also indicate that clopyralid use on lawns and turf has been decreasing annually since the presence of clopyralid residues in compost was first noticed in 2000. This trend is expected to continue due to future amendment of clopyralid turf labels to prohibit use on residential lawns. The results from the compost monitoring funded by CIWMB indicate clopyralid residues in compost are decreasing.

- Commentor #5:

Comment #8: The commentor believes the proposed clopyralid regulations are not sufficient to prevent future instances of compost contamination with clopyralid. Clopyralid use is increasing in California and the proposed regulations focus only on the applicator as the person responsible for insuring that green yard waste does not leave a clopyralid treated site. The landscape contractor or property owner is usually responsible for the disposal of green waste and may not be aware of the composting restrictions. DPR does not have a program to monitor levels of clopyralid in compost or audit pest control dealers for compliance with the proposed regulations. DPR needs to set penalties for pest control dealers, pesticide applicators and property owners that are adequate to discourage violations of the clopyralid regulations.

Response: DPR and CACs have the authority delegated by the FAC to initiate enforcement action against pest control dealers and qualified applicators for violations of the clopyralid regulations. DPR can revoke or suspend the business license of a pest control dealer or pest control business after a hearing. The CAC can refer violations of the clopyralid regulations to the County District Attorney, City Attorney, or Circuit Prosecutor as a misdemeanor with fines of \$500-\$5,000 pursuant to FAC section 11891 for each offense. The Director can also seek to levy civil penalties of \$1,000-\$10,000 pursuant to FAC section 11893 for each violation of these regulations through the Office of the Attorney General.

Also, see response to comments #1 and #7.

- Commentor #6

Comment #9: Dow AgroSciences believes the proposed regulations are unnecessary, burdensome to private industry, and will not provide any additional protection for compost than measures that have already been taken by registrants of clopyralid products. The clopyralid levels detected in compost are not high enough to be injurious to sensitive plants as no cases of phytotoxicity have been documented in California. Research has demonstrated that clopyralid does breakdown in mature compost when composting is done with adequate water, temperature and time. The labels of the currently registered clopyralid lawn and turf products have been amended to remove use on residential lawns and specifically limit use to turf on golf courses only in California.

Section 6576 of the proposed regulations require a pest control dealer to obtain a signed statement from a pesticide applicator indicating he/she will not apply any product containing clopyralid to a residential lawn and will only apply it to sites where the grass clippings will remain on the property. These signed declarations shall be obtained at the time of purchase and be retained by the pest control dealer for two years. Dow AgroSciences feels this requirement represents an unnecessary and costly logistical burden for pest control dealers.

Dow AgroSciences believes the proposed clopyralid regulations are unnecessary and recommends against adoption. At the least, section 6950(a) should be amended to read: *No application shall be made to lawn and turf unless the grass clippings from the treated area remain on the property. In no instances shall clopyralid-containing products be applied to residential lawns.*

Response: DPR does not concur with the suggested amendment to the clopyralid regulations because a responsible party has not been identified or designated to ensure the grass clippings will remain on the treated site. In the second instance, the qualified applicator is implied as the responsible person because he/she will make the application. A responsible party needs to be clearly identified in order for an enforcement action to take place. Also, see response to comment #3.

As of July 2005, a review of the most current product labels on file with DPR determined there were six registrants with 18 products that contain clopyralid as the active ingredient registered in California. Fifteen of these products are registered for use on turf sites, some of which include residential lawns. Only some of the products registered by Dow AgroSciences bear the restrictive labeling regarding the prohibition of use on residential lawns and the requirement to notify property managers not to use the grass clippings for composting or to send grass clippings to a compost facility. The labels for most of the other registrants' products have not been amended to bear the restrictive language for lawn and turf uses. As these product labels are currently in the channels of trade, applicators applying these products may not be aware of the prohibition of use on residential lawns. The clopyralid regulations are needed to restrict sales to holders of a DPR qualified applicator certificate or qualified applicator license and to cause notification of the qualified applicators at the time of purchase that use on residential lawns is prohibited and grass clippings from the treated site must remain on the property.

PUBLIC HEARING

DPR did not receive any requests to hold a public hearing and no hearing was scheduled or held.

CONSULTATION WITH OTHER AGENCIES

DPR has consulted with CIWMB in jointly investigating the potential impact of clopyralid in compost. In addition, the proposed regulatory action was discussed with the Agricultural Pest Control Advisory Committee (APCAC). The APCAC is an advisory committee to the DPR Director in all matters concerning the licensing, certification, and regulation of persons and firms licensed or certified pursuant to 3 CCR, Division 6.

Copies of correspondence with these agencies are contained in the rulemaking file.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII B of the California Constitution. DPR has determined that no discretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

POSTING REQUIREMENT

Title 3 CCR, section 6110, states in part that, “The public report shall be posted on the official bulletin boards of the Department, and of each commissioner’s office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days.” DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department’s Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.